(Testimony of Ruby J. Goddard.)

The Court: The court has ruled. The objection is sustained. [3658]

Mr. Faulkner: I did not know your Honor had. I take an exception to the ruling.

Mr. Pratt: If the Court please——

Mr. Faulkner: Just a minute. I would ask the Government at this time to produce the rules and regulations issued by the War Shipping Administration to all dock and ship stewards relating to the inspection of merchandise for War Shipping boats in effect in May, 1944.

Mr. Pratt: Is there such a document?

Mr. Faulkner: Yes, sir.

The Court: Proceed with this witness.

Mr. Pratt: If the Court please, there is one answer that the witness made in response to a question by Mr. Faulkner that I move be stricken, in which he stated that he knew that the practice obtained on the ships of weighing.

The Court: What was the question?

We will take a recess and give the reporter an opportunity to look it up.

(Recess.) [3659]

Mr. Pratt: The reporter, I think, has found the question and the answer.

The Court: Read the question and the answer, Mr. Reporter.

(The reporter read as follows:

"Q. When eggs and cheese and merchandise of that type were sent to the waterfront in the ordinary course of business, was it your un-

(Testimony of Ruby J. Goddard.)

derstanding that they were checked over by the ship's stewards? A. Yes, sir.

"Q. And weighed? A. Yes, sir.")

Mr. Pratt: I ask that the last of those questions be stricken.

The Court: Let them go out and let the jury disregard them.

Mr. Faulkner: Exception.

Mr. Pratt: If the Court please, Mr. Faulkner has asked the Government to produce, as I understand it, rules and regulations promulgated by the War Shipping Administration requiring inspection and weighing of products when they arrive at the boat, or at the pier. We know of no such rules. However, careful inquiry will be made and if it develops there are such rules we will produce them if they are available. I understand from Mr. Faulkner that there are such rules.

Mr. Faulkner: I understand there are, also.

Mr. Pratt: Well, we know of no such rules, but we will make every effort to find out if they exist.

Mr. Faulkner: While Mr. Pratt is on his feet, the question [3660] arose in this case, your Honor will remember, that certain eggs were delivered to the Army as Grade A eggs and Extras, and so on. I think it would save a lot of time if I could make a statement to you and you confer with your advisers, Mr. Pratt. It is the postion of the defendants that in that period, 1941, in June and February, the greatest quantity of eggs were being delivered to the United States Army as distinguished.

(Testimony of Ruby J. Goddard.)

from those shipped out for export which were not inspected by Colonel Hand or his men, were substantial. I have sheaves of invoices, and after you make a little check you might make a statement on that.

Mr. Pratt: I will be glad to.

Mr. Faulkner: Maybe this afternoon.

Mr. Pratt: Yes.

Mr. Faulkner: Will your Honor indulge me just one second?

Q. Mr. Goddard, in respect to the ship Phillipa, have you got the papers there?

A. They are over there.

Q. Do you remember the exhibit you were looking at? A. Yes.

Q. Was it 77? A. No. 77.

Q. Now, I call your attention to that transaction. You will observe there that it calls for 65 case of Medium Processed AA eggs, is that right?

A. Yes.

Q. Now, it has been testified in this case, Mr. Goddard that the eggs that actually were delivered on that vessel were made up of 65 cases, 15 cases of which bore no Department of Agriculture [3661] stamp, and 40 odd cases which did, or it may have been 50, the difference. It has further been testified that those cases that bore a Department of Agriculture stamp bore the date April 27, 1944. I show you Defendants' Exhibit BM, an egg grading certificate of the Department of Agriculture, showing the grading of eggs, 186 cases of Medium AA

(Testimony of Ruby J. Goddard.)

eggs in the plant of Nye & Nissen on the 27th of April, 1944. Is there any question in your mind, Mr. Goddard that it was—I will withdraw that. That egg grading certificates shows, does it not, that there were 186 cases of eggs inspected and stamped in the plant of Nye & Nissen and that the stamps bore the date April 27, 1944?

A. Yes, sir.

Q. Now what is the date of the delivery to the Phillipa, according to your hand tag?

A. May 3rd.

Q. May 3rd? A. That is right, May 3rd.

Q. Did you ever intentionally in connection with that shipment for that quantity of eggs that bore a Department of Agriculture stamp, namely, April 27th, take a quantity of eggs to supplement 50 cases of eggs which you knew did not bear a Department of Agriculture stamp? A. No.

Q. According to the testimony in this case, Mr. Nystrom is the man who said that he made that delivery for you. Do you remember that?

A. Yes.

Q. Now, on the 3rd day of May, the day of that delivery, in all of the deliveries that you had made in your department to [3662] the waterfront in the year, say, 1944, was the claim ever made or a suggestion ever made to you that the wrong quality of eggs had been delivered at the waterfront?

A. No, sir.

Q. It was a few months earlier than that that

(Testimony of Ruby J. Goddard.)

the directive came into effect requiring Department of Agriculture inspection, isn't that correct?

A. Yes.

Q. During the period of time, Mr. Goddard, from the 24th of April until the 13th of May, was there in the firm of Nye & Nissen large and substantial quantities of Medium Processed AA eggs all inspected by the Department of Agriculture?

A. Yes.

Q. In addition to that, Mr. Goddard, during that period of time did the Department of Agriculture inspectors come into your premises and inspect a particular quantity of eggs for particular shipments? A. Yes.

Q. In connection with any particular inspection, did you receive an egg grading certificate?

A. No.

Q. So that during the period from April 24th to May 13th, or April 15th to May 15th, the eggs that were on the floor of Nye & Nissen that were inspected by the Department of Agriculture would be represented by egg grading certificates to you and also represented by additional egg grading certificates referring to other eggs shipped to the shipping companies, is that right, or issued to the shipping companies? A. Yes.

Q. With respect to the fact that some of those egg grading [3663] certificates issued to the shipping companies were based on your stock pile inspections you heard Mr. Reid testify to that, and that is in accord with your memory? A. Yes.

(Testimony of Ruby J. Goddard.)

Q. In connection with that slip, the Phillipa, did Mr. Henry Berman have anything to do of any kind, character or description with filling orders from the companies which you were handling?

A. No.

Q. You, however, at times had something to do with filling his orders, isn't that correct?

A. Yes.

Q. But in so far as your orders were concerned Mr. Berman never participated in them, at all?

A. No.

Q. The merchandise was under your control and responsibility in the plant of Nye & Nissen, is that right? A. Yes, sir.

Q. Eggs, butter and cheese? A. Yes.

Q. Part of that eggs, butter and cheese went to Mr. Berman for his purposes and the balance were under your control, am I correct in that?

A. Yes.

Q. In connection with the inspection of eggs at the time of April and May, would you be the man who would send for the Department of Agriculture Inspector? A. Yes, sir.

Q. What did you do in respect to preserving that stock pile with the type of eggs that were being called for during this period?

A. When we received a load of eggs in from any plant I would immediately call for inspection to determine the quality of those eggs so that when we received orders we would know [3664] how to

(Testimony of Ruby J. Goddard.)

fill them, and we would be able to take care of these orders as quickly as possible.

Q. During the period of April and May, 1944, testimony has been given in this case and in each instance, Mr. Goddard, in so far as you are concerned, the incident relates to Medium AA eggs. I will ask you if the greater proportion of the eggs going to the waterfront were Medium AA eggs, or Large eggs? A. I would say Large eggs.

Q. What would you say the proportion was, 5 to 1, 10 to 1, or what?

A. Oh, I would say about 3 to 1.

Q. Those eggs likewise required inspection?

A. Absolutely.

Q. You followed the testimony of these witnesses. Do you remember any incident where Large eggs were involved? A. No.

Q. Now, in respect to Medium eggs, do you know of any incident when you directed your regular driver, Mr. Eby, to make a single delivery on the waterfront where there has been any criticism of a delivery upon either—by either the shipping company or by any witness in this case?

A. No, there is no such incident.

Q. Whoever the driver may have been on this ship; whether it was Mr. Eby or Mr. Nystrom, as he testified, was it your practice at that time when you would have an order for 65 cases, to point to a row of eggs and say, "Get those 65 cases of eggs out of that row"? A. Yes.

Q. "For that order"? A. Yes. [3665]

(Testimony of Ruby J. Goddard.)

Q. What would you do from then on in respect to the order?

A. I would wait until he had the eggs on and then I would go over to the truck and check the quantity of eggs and see if he had the cases that the order called for.

Q. And then you would attempt to check the weights on the cheese? A. If I could.

Q. Now, Mr. Goddard, I don't think there is any testimony on cheese in reference to the Phillipa. Well, there was another boat, the Cape Breton. Were you the man who handled the company that operated the Cape Breton?

A. Matson Navigation.

Q. Was that Matson Navigation Company?

A. Yes.

Q. Have you got it there?

A. I think it is here.

Q. What is the date of that order?

A. The shipping tag is May 10.

Q. May 10, 1944? A. May 10, 1944.

Q. What does it call for?

A. It calls for 45 cases of eggs, Medium, Grade AA, Processed, 7 boxes of butter, 3 cases of California Loaf cheese, one case of California Romano Dolce cheese, and 20 pounds of grated cheese.

Q. Do you know who delivered that to the waterfront? A. No.

Q. Do you know whether Mr. Nystrom delivered it? A. I have no recollection.

Q. Or Mr. Ranson?

(Testimony of Ruby J. Goddard.)

A. I have no recollection.

Q. Have you any independent recollection of an order for the Cape Breton, at all, as a particular incident which you remember? [3666]

A. No.

Q. May I see that exhibit? At the time this order was filled, how long had you been dealing with the Matson Navigation Company, Mr. Goddard?

A. All the time that I was at Nye & Nissen; it was about 12 to 14 years.

Q. In connection with that vessel, Mr. Goddard, there is supposed to have been 45 cases of eggs delivered, Medium processed AA, according to the hand bill which you had on that order, and there has been testimony here that in connection with filling the order for Matson Navigation Company to the Cape Breton, that you and Mr. Berman combined in filling that order, and that you hand-trucked—no, I withdraw that, your Honor. That testimony was the vessel following there.

In relation to the Cape Breton, there was 36 cases of eggs, according to the testimony of Major Evans, which had a Department of Agriculture stamp and 9 cases unstamped. I will ask you, Mr. Goddard, if in connection with billing, I mean filling that order you have any knowledge that a single case of eggs went down to the steamship Cape Breton of the Matson Navigation Company, to fill that hand tag order that you hold in your hand that did not bear a Department of Agriculture stamp?

(Testimony of Ruby J. Goddard.)

A. No, sir.

Q. Did you prepare that bill with knowledge that you had delivered or had permitted the delivery of a case of eggs, or nine cases, of eggs, or any case of eggs that had not in fact [3667] been delivered that bore a Department of Agriculture stamp? A. No, sir.

Q. Without going into the details of weights of cheese, was the weight of cheese indicated on that bill? A. Yes.

Q. At the time you prepared that bill did you, to the best of your ability, select quantities of cheese from the floor of Nye & Nissen that corresponded in weight to the weights that you made the bill out for? A. Yes.

Q. Now, if you went back to the Phillipa, at the time that you made that invoice out which you referred to a few minutes ago, did you have any knowledge of any kind that a single item covered in that invoice went down to the ship that did not fit the description in that invoice? A. No.

Q. Did you, to the extent of your ability, fill that order exactly as written? A. Yes, sir.

Q. At that time, Mr. Goddard, were things slack in your plant or were you a little lively?

A. Very busy.

Q. What time would you go to work in the morning?

A. I would be there usually by quarter to seven, seven o'clock.

Q. What time would you leave?

(Testimony of Ruby J. Goddard.)

A. When we got finished.

Q. What time would that be?

A. That would vary anywhere up to seven, eight, nine, or ten o'clock.

Q. During that period of time there was another ship involved called the Cape Cumberland. Will you look in there and see if you find the Cape Cumberland? In relation to the Cape Cumberland, [3668] this is a ship, Mr. Goddard, where the company is a customer of yours. A. Yes.

Q. Did you handle that transaction?

A. Yes.

Q. When you had a transaction like that, Mr. Goddard, would Mr. Berman participate in filling the order? A. No, sir.

Q. Whose hand tag is that? A. Mine.

Q. Moore-McCormack was one of your customers? A. Yes.

Q. How long had they been your customer?

A. Oh, for a good many years.

Q. What does that particular order call for, Mr. Goddard?

A. It calls for 15 cases of eggs, Medium Grade AA Processed, 12 boxes of butter AA, 4 cases of California Loaf cheese.

Q. How many cases of eggs? A. 15.

Q. 15. Do you remember who delivered that order? A. No, sir.

Q. It was testified here that a man, by a man named Nystrom that he delivered it. Have you any

(Testimony of Ruby J. Goddard.)

independent recollection of him delivering that order?

A. No.

Q. You know, do you not, that that order called for at that time eggs which were inspected by the Department of Agriculture?

A. Yes, sir.

Q. Now, what is the date of the order?

A. May 10.

Q. On May 10, 1944, is there any question in your mind that there were ample, plenty, many, many cases of Medium Processed AA eggs on the floor of the plant of Nye & Nissen, all of which had been inspected by the Department of Agriculture?

A. No question at all. [3669]

Q. Mr. Goddard, in connection with that delivery there was some testimony given in this case that the cheese that went on that ship, the Cape Cumberland, that Mr. Berman in the presence of Mr. Nystrom handled that cheese, and that Mr. Berman took a scraper and took all of the marks off of boxes of cheese that went to fill an order for the Moore-McCormack Steamship Cape Cumberland. Did that ever happen in your presence?

A. No, sir.

Q. Would there be any occasion of any kind, character or description for Mr. Berman to handle a single case of cheese going to that vessel?

A. No, sir.

Q. In respect to that incident of eliminating the mark on boxes of cheese I will ask you if you in the presnce of Mr. Nystrom or anyone else's presence prepared the cases of cheese that went on that

(Testimony of Ruby J. Goddard.)

vessel, and that you instead of Mr. Berman removed any markings?

A. I do not recall the incident at all, Mr. Faulkner.

Q. Mr. Goddard, at the time you prepared that invoice did you have any knowledge of any kind that a single article in that invoice went to fill that bill or invoice that was not as described in the invoice? A. No, sir.

Q. At that time, that is a transaction in which Mr. Nystrom said he made the delivery and, as I understand, you have no recollection on that subject? A. No, sir.

Q. In connection with the deliveries from your firm to Moore-McCormack that were handled by your regular driver, Mr. Eby, [3670] have you any recollection of any complaint made in the month of April and May of 1944 in respect to either the quality or the weight of any articles delivered to the Moore-McCormack Steamship Company by your regular driver? A. No, sir.

Q. Until you came into court here did you ever hear any complaint of any kind in respect to either the weight or the quantity or the quality of anything that went to the ships Phillipa, Cape Breton, or Cape Cumberland? A. No, sir.

Q. Now, the date of that is May 10?

A. May 10.

Q. In respect to that shipment, Mr. Goddard, I show you an egg grading certificate of the Department of Agriculture showing that 45 cases of

(Testimony of Ruby J. Goddard.)

U. S. Grade AA Medium had been inspected for that vessel on May 9, 1944? A. That is it.

Q. Were the cases of eggs inspected by the Department of Agriculture for that particular vessel available on the premises of Nye & Nissen to fill that order on the day if was filled?

A. Yes, sir.

Q. Did you intentionally or knowingly permit any other eggs to go out of your premises in lieu of the inspected eggs? A. No, sir.

Q. These inspections that occurred at your request during this period of time were for a primary purpose, were they not, of having a stockpile of Department of Agriculture inspected eggs on the floor of your premises to facilitate shipments to the waterfront? A. Yes, sir. [3671]

Mr. Pratt: If the Court please, I have not objected to many of these leading questions.

Mr. Faulkner: You object to that one? I will withdraw it.

Q. What was the purpose of the Department of Agriculture inspections in your plant in April and May of 1944 in respect to the inspections of eggs? What was the purpose of having them inspect eggs at that time?

A. We would have those eggs inspected to determine their quality so we would always have eggs on hand to take care of any rush order that would come in. We took pride in the way we served these ships. We never fell down on any order at any

(Testimony of Ruby J. Goddard.)

time whatsoever. And that was the only way we could do it.

Q. In connection with the Hawaiian Shipper—

Mr. Pratt: May I inquire the number of that exhibit?

Mr. Faulkner: What is it you wish?

Mr. Pratt: The egg grading certificate to which you called the witness' attention.

The Witness: Forty-two.

Mr. Pratt: The egg grading certificate.

Mr. Faulkner: The exhibit number.

Mr. Sullivan: The exhibit is AN.

Mr. Faulkner: Q. Is the Hawaiian Shipper a ship of the companies that you——

A. Yes, sir.

Q. What line is that?

A. Matson Navigation. [3672]

Q. Here are two invoices, one covering a shipment of eggs to the Hawaiian Shipper on 9/15/44, for 400 cases of Grade A eggs and another one on December 5, 1944, for 400 cases of Large processed Procurement No. 1's.

Mr. Pratt: May I have the numbers of those exhibits?

Mr. Faulkner: The first one is No. U. S. 86 and the second U. S. 87. My recollection of the testimony, your Honor, was that the transactions relating to the first shipment of eggs in September never became the subject matter of any inquiry other than the fact that it was made.

Q. Now, on December 5, 1944, the Matson Navi-

(Testimony of Ruby J. Goddard.)

gation Company was one of the customers of Nye & Nissen? A. Yes, sir.

Q. Do you recall anything particularly about any shipment to the Hawaiian Shipper?

A. No, sir.

Q. I haven't got the hand tag on that, Mr. Goddard, but I will cover as much of that shipment as possible. In relation to that shipment, that is a bill obviously that was based on a hand tag written by you? A. Yes, sir.

Q. And it relates to the delivery of what merchandise?

A. 400 cases of eggs, Large Processed, Procurement No. 1.

Q. And any other merchandise?

A. That is the only thing on it.

Q. In respect to that shipment I show you here a certificate of the Department of Agriculture showing the inspection of 111 cases on December 5, 1944, of U. S. Grade A Large, and I [3673] will ask you if it is not a fact that U. S. Procurement 1's and U. S. Grade A Large, which are the equivalent of an Extra, are identical in quality?

A. Yes, sir.

Q. An inspection certificate for the Matson Navigation Company, the steamship Hawaiian Shipper, December 5, 1944, for 111 cases, and another certificate showing that on either the same day or the preceding day the Department of Agriculture had inspected 289 cases Grade A—it is hard to read that, but that is 289——

(Testimony of Ruby J. Goddard.)

Mr. Pratt: May I have the numbers of those exhibits?

Mr. Faulkner: Q. Will you give Mr. Pratt the numbers of those two exhibits, Mr. Goddard?

A. I can't make it out there. Is it on the back?

The Clerk: Defendants' X for Identification.

Mr. Faulkner: But your Honor will recall that a counterpart of this went into evidence. X for Identification is the particular one I showed the witness and the 111 is X-1, which is in evidence.

Q. At the time that the delivery of eggs was made to the Hawaiian Shipper, do you remember in respect to that delivery any incident so that you would remember the particular delivery?

A. No, sir.

Q. Do you remember whether or not that ship without your hand tag, which I will furnish you later, not only called for a Department of Agriculture inspection, but called for a [3674] Veterinary Corps inspection?

A. Well, this bill shows that.

Q. I did not know that.

A. It is stamped right on here.

Q. In December of 1944 how would you handle a situation where eggs were to go to a vessel such as the Hawaiian Shipper and they required a Department of Agriculture inspection because of War Shipping regulations and required a Veterinary Corps inspection because they carried troops aboard?

A. I have always called the Department of Agri-

(Testimony of Ruby J. Goddard.)

culture in first for them to determine the grade of the eggs, and then when they got through with the eggs and stamped them up, then I would call in the Veterinary Corps. The Veterinary Corps I call in for War Shipping would be the same Veterinary Corps I call in for the troop orders. That would be the Fort Mason branch.

Q. Where would the Veterinary Corps usually make those inspections?

A. Usually in the plant, sometimes down on the dock.

Q. The first inspection would be the Department of Agriculture, is that right? A. Yes, sir.

Q. And then the eggs that have been approved by that department would go on to the Veterinary Corps? A. That is right.

Q. Have you any recollection of where the inspection of the Veterinary Corps took place with relation to this particular shipment?

A. No, sir. [3675]

Q. At the time that you filled the order that is covered by that invoice I will ask you if you had any knowledge of any kind, character or description, that that company, the Matson Navigation Company, did not get the exact quantity and quality of eggs described in that invoice? A. No, sir.

Q. Did you knowingly or intentionally or at all ever see any person deliver into a truck eggs destined for that boat that did not bear a Department of Agriculture stamp on, knowing that that was a substitution for an inspected case?

(Testimony of Ruby J. Goddard.)

A. No, sir.

Q. In connection with the two incidents, one in September and one in December, both for 400 cases of eggs, I will ask you, Mr. Goddard, if you ever had any complaint of any kind in respect to the first shipment of 400 cases of eggs?

A. No, sir.

Q. In connection with the second shipment of eggs in December; were you ever conscious of any complaint in relation to that shipment of eggs?

A. No, sir.

Q. So that is this correct, Mr. Goddard: As you sit there as a witness these are two transactions that occurred in the regular course of business in September and December, 1944, in which the first complaint that you heard about them was in this courtroom, is that correct?

A. That is right. And may I add, Mr. Faulkner, that we made deliveries to Matson Navigation once or twice a day practically every day in the year during that period, and we never had a complaint from [3676] them.

Q. The period covered there is December. How often would you deliver merchandise, butter, eggs and cheese, to the Matson Navigation Company between the 24th of April and the 13th of May?

A. Well, I would say, practically once or twice a day every day. Maybe once in a while we would miss a day. Matson Navigation Company operated a great many boats, and they have operated more boats than anybody else, and as soon as one of their

(Testimony of Ruby J. Goddard.)

boats came in they would want some stores. We would be the party they would call. They would want their merchandise right away and we gave it to them right away.

Q. And do you recall the frequency of orders from the Moore-McCormack Lines?

A. Yes, sir.

Q. How often?

A. Well, they would not run quite as often as Matson. Sometimes the days would go by without a delivery to a Moore-McCormack boat.

Q. How about the American President Lines?

A. The American President Lines operated a great many boats. I would say we would go there practically every day.

Q. During that period?

A. Yes, I would say practically, but not every day.

The Court: We will take a recess now until two o'clock. The jurors may be excused.

(Thereupon a recess was taken until two o'clock p.m.) [3677]

Afternoon Session, March 28, 1946, 2:00 p.m.

RUBY J. GODDARD,

recalled;

Direct Examination (resumed)

Mr. Faulkner: Q. In the year 1943 was the American President Lines a customer of Nye & Nissen? A. Yes.

(Testimony of Ruby J. Goddard.)

Q. And the sales and deliveries, were they handled by you, Mr. Goddard? A. Yes, sir.

Q. I show you an exhibit in this case, U. S. Exhibit 113, and I ask you if you remember that transaction relating to the William S. Clark?

A. Yes, sir, I do.

Q. Did you prepare the order for delivery to the American President Lines reflected by that invoice? A. Yes, sir.

Q. That particular exhibit that you are looking at is a typewritten invoice, is it not?

A. Yes, sir.

Q. I show you this paper and ask you if that is in your handwriting (handing a document to the witness)? A. Yes, sir.

Q. Was that tag prepared by you on or about the date that it bears? A. Yes, sir.

Q. Does it relate to the William S. Clark?

A. Yes, sir.

Q. And it was made in the regular course of business, was it not? A. Yes, sir.

Q. At the time of the transaction covered by that particular hand tag and the typewritten invoice, the American President [3678] Lines, I understood you to say, had been customers of Nye & Nissen over a long period of time? A. That is correct.

Mr. Faulkner: I offer this hand tag in evidence, if the Court please.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit DR.)

(Testimony of Ruby J. Goddard.)

Mr. Faulkner: Q. May I see the folder that you have in your hand? Mr. Goddard, on your hand tag you have reference to a purchase order. What is the number of that? A. H-8461.

Q. H-8464? A. That is correct.

Q. I show you here an American President Lines counterpart of a purchase order and I ask your to look at it.

Mr. Pratt: What is the number of that exhibit, Mr. Faulkner?

Mr. Faulkner: That is Exhibit U. S. 109.

Q. Now, looking at the purchase order and your hand tag, and by reason of any other circumstances, do you remember the particular shipment to the William S. Clark? A. Yes, I do.

Q. How is it you happen to remember a shipment to that particular vessel?

A. Well, the reason I remember this incident is that two or three weeks after I had made this shipment Mr. Moncharsh called me up to his office one day and asked me what kind of eggs I had delivered to the William S. [3679] Clark, because he had just received a telephone call from the American President Lines in which he stated he had a complaint about these eggs.

Q. Did you answer him?

A. Yes, I told him the incident.

Q. In connection with that incident I direct your attention to the purchase order, and what is the date of the purchase order?

A. October 14.

(Testimony of Ruby J. Goddard.)

Q. You notice there, Mr. Goddard, that is says on the counterpart that came from the possession of the American President Lines, "Phone Ruby."

A. That is right.

Q. Do you recall receiving a telephone message in respect to the filling of that order?

A. Yes, sir.

Q. Do you recall from looking at your hand tag and the invoice which I showed you a moment ago the date of the delivery to the William S. Clark?

A. October 18, 1943.

Q. At the time that you prepared, Mr. Goddard, the invoice for delivery of eggs to the William S. Clark under the American President Lines purchase order, what kind of eggs did you invoice that company for?

A. 45 cases of eggs, Mediums, AA, Processed.

Q. In connection with the filling of the order for AA Medium Processed eggs, did you deliver to fill that order AA Medium eggs? A. Yes, sir.

Q. Where did the eggs that filled that order come from? [3680]

A. Came from one of our packing plants.

Q. Do you remember the incident of how that order was filled in your plant on Townsend Street?

A. Yes, I do.

Q. How was that order filled?

A. I received a phone call from the American President Lines on the day that this order was delivered. They would like to have the eggs and butter there that day. And I distinctly remember

(Testimony of Ruby J. Goddard.)

that we had AA Mediums on the floor in fiber cases. At that time—in that period of 1943—most of these shipping companies like Matson, American President Lines, would object to fiber cases. They always wanted their eggs in wooden cases. So when I received this phone call I issued instructions to the foreman of the egg room to transfer forty-five of these cases in fiber cases, AA Mediums, into good clean sound wooden cases, which was done. And those were the eggs that were delivered to the William S. Clark.

Q. Having in mind the date—that was on Missouri Street, wasn't it, in 1943?

A. That is right.

Q. I think you said Mission or Townsend Street. At all events, it was after you moved to Missouri Street? A. That is correct.

Q. Do you know whether or not, Mr. Goddard, the eggs in the fiber cases were or were not inspected by the Department of Agriculture?

A. Well, to the best of my recollection, I would say they were stamped Mediums, but I am not [3681] positive.

Q. You mean by that that they had been inspected? A. That is right.

Q. In connection with the filling of that order, is it your recollection that the circumstances of filling that order were as you have just related?

A. Yes, sir.

Q. At that time were you receiving in substan-

(Testimony of Ruby J. Goddard.)

tial quantities from the packing plants of Nye & Nissen AA Medium eggs packed in carton cases?

A. Yes, sir.

Q. I mean fiber cases. A. Fiber cases.

Q. At or about that time, Mr. Goddard, the record shows that you received or signed as having received, some time after, I think, the 15th of October, a quantity of eggs that came from Los Angeles, from some ice plant—I think it is the Terminal Ice Company or some name similar to that—and do you recall the particular eggs received from that ice and cold storage company? A. No, sir.

Q. Did you in the month of October, 1943, and at or about that time in respect to any eggs that came into your plant on Missouri Street have a uniform practice with respect to the disposition of those eggs when they came into the plant?

A. Yes, sir.

Q. What was that practice?

A. When we would receive a lot of eggs from an ice house we would immediately assign that lot of eggs to the egg room to be candled and graded to determine the quality of those eggs.

Q. Was that a uniform practice? A. Yes.

Q. At that time, Mr. Goddard, would any eggs that came into your plant and into your custody either as an employee of Nye & Nissen or in connection with the Guardian Warehouse people, would you put those eggs into storage or on your floor that came from ice plants, regardless of whether it

(Testimony of Ruby J. Goddard.)

was Los Angeles or San Francisco, without immediately candling them? A. No, sir.

Q. Do you know whether or not the particular wooden cases, if they were wooden cases, that contained the eggs from Los Angeles, which you signed for apparently—what happened to those cases?

A. Any lot of eggs that we would candle in our candling room, if those eggs were in good sound wooden cases, we would always salvage those cases and save them. We would use up all the old fiber cases that we had around the plant. These wooden case we would save and use them for any order that required a wooden case.

Q. Do you know from a definite recollection whether or not you used any cases that had come into your plant from the Terminal Ice Company?

A. No, I do not.

Q. In respect to this order as to the American President Lines filled on October 18, did you fill that order with storage eggs that had come into your plant at or about the time that you filled the order for the Matson? A. No, sir. [3683]

Q. Pardon me?

A. Absolutely not, no, sir. As a matter of fact, good customers, like the American President Lines and the Matson Navigation, we always gave them the best merchandise we had in our plant. They were good old customers of ours.

Q. In the fall of the year, in October 1943, or in any October, from your experience in handling eggs in the plant of Nye & Nissen, would you know

(Testimony of Ruby J. Goddard:)

whether eggs coming from a storage plant would meet the description of eggs on that invoice, namely, ordinarily AA eggs? A. No, sir.

Q. It would not meet that description?

A. Would you repeat that question? I didn't hear the ending.

Mr. Faulkner: Would you read the question?

(Question read.)

A. It would depend on how long they were in storage. [3684]

Q. Ordinarily, Mr. Goddard, were eggs that came into your place from storage, would you assume that the entire lot would meet the grade AA?

A. I don't think so.

Q. In connection with the matter of butter, there are two things that I overlooked here. In 1940, 1941, 1942, or 1939, whenever Mr. Pineda picked the incident, what quality of butter was ordinarily purchased by the Army at that time?

A. 90 score.

Q. 90 score? A. That's right.

Q. What are the scores for butter that is sold for consumer use, at least to people like the people in the courtroom? A. 91.

Q. Distinguished from bakers'?

A. 91 score, 92 score, and 93 score.

Q. And 90.

A. 90 score was very seldom sold over the grocer's counter.

Q. Well, that was what the Army was universaly buying? A. That's right.

(Testimony of Ruby J. Goddard.)

Q. In respect to the incident in the cutting of butter, I direct your attention to a particular incident. Did you, in connection with filling an Army order, ever tell Mr. Pineda to cut the butter uniformly one ounce short per pound?

A. No, sir.

Q. Did you ever see him cut butter one ounce short per pound knowingly? A. No.

Q. Pardon me?

A. I never saw him cut short one ounce per pound [3685] short.

Q. In the year 1939, in October, and in the year 1940 in June, have you any recollection, Mr. Goddard, of ever having filled an order for the United States Navy or for any other purchaser where the quantity of eggs inspected in your plant was 2000 cases? A. No, sir.

Q. Have you any recollection, Mr. Goddard, of any kind, of Mr. Moosman or any other Department of Agriculture inspector ever inspecting on the floor of the premises at 324 Townsend Street in one transaction in one day, 2000 case of eggs for anybody, whomsoever? A. No, sir.

Q. Do you have any recollection of any order in June of 1940 where there was accumulated for delivery to a single purchaser 2000 cases of eggs inspected prior to that delivery? A. No.

Q. In connection with the testimony introduced in this courtroom, Mr. Goddard, without outlining all of it to you, testimony has been given in relation to transferring eggs from one case to another.

(Testimony of Ruby J. Goddard.)

Have you ever directed any employee of Nye & Nissen to transfer eggs from one case to another?

A. Yes, sir.

Q. Frequently.

A. Not too frequently; whenever the occasion arose.

Q. Have you ever instructed or participated in the transfer of eggs, or, rather, have you ever instructed anyone to transfer eggs out of cases which bore an inspection stamp? A. Yes.

Q. On many occasions?

A. On some occasions. [3686]

Q. Do you recall, Mr. Goddard, the occasion when Mr. Andrade left the employ of Nye & Nissen? A. Yes.

Q. Did you have a conversation with him?

A. Slightly.

Q. What did he say?

A. Well, he went out cursing a blue streak and he was going to get even with everybody, and streaked right out of the place.

Q. Do you know whether he was fired?

A. He was fired.

Q. Did he tell you that?

A. Yes, he told me he was fired.

Q. When did he go out of the place, in reference to the conversation about being fired?

A. Well, the day he came down to get his working clothes, I don't remember the exact date.

Q. Was that the last you saw of him as an employee?

(Testimony of Ruby J. Goddard.)

A. That is the last I saw of Andrade.

Q. Pardon me?

A. That is the last I saw of him at that time.

Q. You heard his testimony about the circumstances of his leaving, which was that he left, himself, and that you followed him out to an automobile and pleased with him to come back and talk to Mr. Moncharsh, or to come back and talk to Jack Smith. Did you plead with him or talk to him, trying to reinstate himself with anybody?

A. No. He had told me they had fired him. That is when he walked out of the place. He was using some cuss words, I don't know what they were, and he was yelling that he was going to get even with everybody.

Q. Did you follow him to his automobile and urge him to keep [3687] quiet and not to talk to anybody?

A. No, sir, I never left the plant.

Q. Mr. Goddard, I show you a hand bill and ask you whose handwriting that is, it is U. S. Exhibit No. 104, which relates to the Francis W. Parker.

Mr. Pratt: What is the exhibit number?

Mr. Faulkner: 104.

The Witness: That is Mr. Berman's handwriting.

Mr. Faulkner: Q. In connection with filling the order, or the preparation, rather, of that invoice, did you participate in any manner in the preparation of that invoice? A. No.

(Testimony of Ruby J. Goddard.)

Q. Did you fill that order? A. No, sir.

Q. Did you select the merchandise that filled that order? A. No, sir.

Q. Did you participate with Mr. Berman in selecting the merchandise to fill that order?

A. Mr. Berman came and asked me for merchandise, what merchandise he could have.

Q. I mean would you actually, physically, cooperate with Mr. Berman in filling either that order on Nye & Nissen's City Sales? A. No.

Q. In the interest of time, Mr. Goddard, do you recall that during this trial there were a series of ships that were identified as ships which had received merchandise from the firm of Nye & Nissen, from the Nye & Nissen City Sales Division. They were the John Muir, the Cape Pillar—that was one of your [3688] ships? A. No.

Q. The Josiah Royce, Cape Charles, Gilbert Hitchcock, Henry White, Czechoslovakia Victory, the Phillipa—that was your ship?

A. That was one of my boats.

Q. Then there was the Edmund Ross, the William Coulter, the Francis Parker, the Mission San Diego, the Heber M. Creel, and the James Oliver?

A. That was one of Mr. Berman's.

Q. All of the ships I have named were ships that received their merchandise through the handling of Mr. Berman? A. That is correct.

Q. Did you participate in the preparation of any of the invoices similar to the exhibit that I have shown you in reference to the Francis Parker?

(Testimony of Ruby J. Goddard.)

A. No.

Q. You know, do you not, Mr. Goddard, that in addition to those hand tags that there was in respect to each of those cases, those ships, introduced here in evidence a printed form of the firm of Nye & Nissen in which an invoice was typed out, and I think that it had the merchandise, a description, and Trini Roble's name on it. Do you recall that series of—— A. Yes.

Q. That related to those ships. Did you prepare any of those invoices? A. No.

Q. Do you know or did you know at the time those orders were filled, whether they were filled properly or improperly? A. No.

Q. Did you know anything about the method of the actual filling of those orders?

A. What do you mean by "method," Mr. [3689] Faulkner? I mean did you know—withdraw it in that form. In other words, in connection with filling those orders of Nye & Nissen City Sales, I mean for all of those ships, did you prepare the invoices, the hand tags? A. No.

Q. Did you participate in their preparation?

A. No.

Q. Did you prepare the printed invoice, that is, the typewritten invoice? A. No.

Q. Did you aid in their preparation?

A. No.

Q. Did you describe to anybody the merchandise that was covered by them?

(Testimony of Ruby J. Goddard.)

A. I may have pointed out to Mr. Berman which merchandise it was.

Q. At the time you pointed out where certain merchandise was, during that period of time, Mr. Goddard, would you have any knowledge whether the merchandise that Mr. Berman was asking to be pointed out to him went to either the War Shipping boats or to the City Sales business?

A. No.

Mr. Faulkner: I think that is all. Will your Honor give me one moment? That is all, but before Mr. Pratt examines Mr. Goddard, may I speak to Mr. Zirpoli, your Honor?

The Court: You may.

Mr. Faulkner: If your Honor please, there is a very short witness who is a chief wharfinger for the State. I will ask counsel if I could put him on before Mr. Pratt cross-examines Mr. Goddard?

The Court: He is available? [3690]

Mr. Faulkner: Yes.

The Court: He is here now?

Mr. Faulkner: Yes.

The Court: We will conclude with this witness.

Mr. Faulkner: Mr. William Geary.

The Court: Just a moment. He is available at any time?

Mr. Faulkner: Excuse me.

The Court: We will conclude with this witness first.

Mr. Faulkner: Very well, your Honor.

(Testimony of Ruby J. Goddard.)

Cross-Examination

Mr. Pratt: Q. Mr. Goddard, referring to the last few questions and answers, you at your plant there had to do with the supplying of ships, to a great number of ships, did you not? A. Yes.

Q. Dozens of them? A. Yes, sir.

Q. I think you have said that the Matson Navigation Company ran, or, perhaps more than any other shipping companies, and they had to do with something over a hundred, perhaps 125 ships.

A. I didn't mention the number of ships. I said a great number.

Q. A great number of ships, and they were coming in at various times, going out to the Far Pacific and remaining there for months and then coming back for re-equipment, is that right?

A. That is right.

Q. You have no recollection of specific instances, as far as [3691] specific ships are concerned, do you? A. No, not exactly.

Q. So when you say that you had nothing to do with these various ships in which Mr. Berman was the important individual in equipping or sending supplies, that is because you are not able to remember any particular ship that long ago?

A. No, that is not the fact, at all. This particular shipping company that controls these ships is one that we had nothing to do with.

Q. That is because it was being handled by Mr. Berman, is that right?

(Testimony of Ruby J. Goddard.)

A. I did not have anything to do with filling those orders.

Q. Your recollection is not of any specific ship but it is the fact, is it not, that you are assuming because they were ships handled by Mr. Berman that you had nothing to do with it?

A. No, I am just telling you that those were the companies that Mr. Berman handled.

Q. And, therefore, any boat that he handled, any ship that he handled you had nothing to do with, is that it?

A. In invoicing or preparing the invoice.

Q. That is the basis of your recollection that you had nothing to do with the ships that were being handled by Mr. Berman, is that correct?

A. No.

Q. Then, do you——

A. Mr. Pratt, I said I would point out to Mr. Berman the merchandise that he could use for these ships.

Q. Then requests came from Mr. Berman from time to time to you [3692] to indicate certain merchandise to fill orders on those boats, that occurred, did it not? A. He would ask me, yes.

Q. And that related not only to eggs, but to butter and to cheese, did it not?

A. That is correct.

Q. In many, many cases, isn't that true?

A. That is correct.

Q. So when you say you had nothing to do with these several ships that were mentioned to you by

(Testimony of Ruby J. Goddard.)

Mr. Faulkner, the basis of your statement is just as you have said, that it was a matter of practice for Mr. Berman to handle his own ships unless and in the event that he wanted you to point out certain merchandise? A. That is correct.

Q. Now, you testified about a shipment of eggs in December of 1943 to the steamship William S. Clark—in October of 1943, I think it was, and you have testified that eggs came in or were prepared for this ship in fiber cases, is that right?

A. I did not say that. I said we had a stock of eggs on the floor in fiber cases.

Q. These eggs on the floor that you say were available had been inspected, had they?

A. I said they may have been.

Q. May have been? A. That's right.

Q. Then you don't know whether they were, do you?

A. To the best of my knowledge they may have been inspected.

Q. Yes, they may have been inspected. Your order was to transfer those eggs into some other cases in order to meet the requirements of the American President Lines to have eggs in wooden [3693] cases? A. That is correct.

Q. That is your explaantion, is it, for these eggs having been in cases that had the number 3737?

A. I just said they went into wooden cases.

Q. You don't know what wooden cases that they were transferred to?

(Testimony of Ruby J. Goddard.)

A. That's right. I just said they went to a lot of wooden cases.

Q. The eggs that were supplied to that ship, I think you testified, were Medium AA Processed eggs, is that right? A. That is correct.

Q. And they were eggs that you knew complied with that description, is that right?

A. That's right.

Q. How did you know that?

A. They were either inspected or they had come in from one of our plants and invoiced to us as AA Mediums.

Q. If they were invoiced as AA Mediums, then you assumed they were AA Mediums?

A. Yes.

Q. You made no examination of the eggs?

A. No, I don't.

Q. You heard the testimony, of course, in regard to these eggs that were examined on the William S. Clark, did you not? A. Yes.

Q. Wasn't it your custom in shipping eggs to these particular ships, and particularly the American President Lines, to have labels, your paper label, your Biddy Egg label on the cases?

A. No. [3694]

Q. It was not customary? A. No.

Q. As a matter of fact, weren't all of your cases shipped to the War Shipping Administration uniformly—didn't they have uniformly your label on both ends of the case?

A. Not all of them, no.

(Testimony of Ruby J. Goddard.)

Q. Wasn't it a matter of custom and practice always to have your label on your cases for the War Shipping Administration? A. No.

Q. Wasn't it required—— A. No.

Q. ——by the War Shipping Administration?

A. No. We could either put a label on it or you could put a rubber stamp with your name on it, either way.

Q. You testified that eggs were segregated on the floor of your premises by means, I think you said, of a chalk mark on the floor and an indication of the quality and size of the eggs in a certain location?

A. No, I did not say that the mark was on the floor. I said we would have a lot of eggs on the floor and would put a chalk mark on the front end of the tray which would illustrate the quality of the eggs in that line of your trays.

Q. So the eggs were there on trays, were they, those that had been, the quality of which had been determined?

A. If we had enough trays we always put them on trays, otherwise we would have to hand-tuck them in dumps of five.

Q. So you could always tell where there were AA eggs or Medium [3695] AA eggs or Medium A eggs—— A. Surely.

Q. Because they were on these trays?

A. Or in rows.

Q. Or in rows on the floor? A. Yes.

(Testimony of Ruby J. Goddard.)

Q. And ~~an~~ indicating mark in some way was made for purposes of identification?

A. Where I could identify them.

Q. Where you could identify them?

A. Yes.

Q. Where did you have ~~the~~ Peewee eggs on your floor? A. Peewee eggs?

Q. Yes.

A. Well, I could put them anywhere. You never have many on your floor.

Q. Well, how many?

A. I would estimate you would get about four or five or six cases a week from all your plants.

Q. Did they ever accumulate to a considerable quantity?

A. No. We moved them as fast as they came in.

Q. How large a quantity at any one time were there on the floor of those premises?

A. Of Peewees?

Q. Of Peewees.

A. I could remember never more than four or five cases if that many.

Q. At any one time?

A. At any one time.

Q. So that according to your statement it would have been impossible for ten cases of Peewees to be used in loading on one truckload for delivery to the waterfront? A. Practically.

Q. Practically. As far as the steamship Cape

(Testimony of Ruby J. Goddard.)

Breton is concerned, I think that was one of yours, was it?' A. That's right.

Q. How did it happen that of this shipment to the Cape Breton [3696] of 45 cases of eggs that 36 cases of them only were stamped with the Department of Agriculture inspection stamp, and that nine were not stamped?

A. Well, Mr. Pratt, that is something I can't understand, of all the thousands of cases of eggs that my department delivered down to the waterfront, and when I say thousands I mean thousands, you can point to 9 or 15 cases of eggs.

Q. Of these 45 cases of eggs, how do you account for the fact that one case which was inspected on the ship by Major Evans proved to be a case of Peewee eggs weighing less than 34 pounds?

Mr. Faulkner: I object to that designation of "Peewee" eggs. Your Honor will recall that the Department of Agriculture man testified yesterday, or whenever he was called, that the method of grading eggs in the department was to hand-weigh the eggs. Every case which counsel for the Government delights in calling Peewee eggs that was delivered to the waterfront, every case that was accepted weighed more than the minimum, and the small eggs and minimum eggs that broke the hand scale were accepted as minimum eggs. That is this testimony.

Mr. Pratt: The testimony of Major Evans was that this particular case of eggs weighed net, the eggs, themselves, weighed 33 pounds 8 ounces.

(Testimony of Ruby J. Goddard.)

Mr. Faulkner: That is 4 ounces——

Mr. Pratt: And the testimony shows that that is less than [3697] the minimum weight for small eggs, and that eggs of that weight are denominated Peewee eggs, and we had some of them here.

Mr. Faulkner: I beg your pardon. The record is there is a case of eggs four ounces under the minimum weight per case, but the testimony shows individual weights, that is, selecting and handing the eggs out for a hand-scale to weigh the eggs, and if they broke the scale they were designated——

Mr. Pratt: The testimony of the inspector, or Major Evans, and of Colonel Hand, is that the net weight of eggs, if it is 34 pounds they are designated or denominated as Peewee eggs, and that is stipulated by the regulations of the OPA which are here in evidence.

Mr. Faulkner: I disagree with Mr. Pratt, because the regulations in evidence show the method of weighing eggs. They may weigh the eggs. They must weigh 34 pounds. I think the language of the regulations is that Small eggs must weigh 15 ounces per dozen. That is the regulation we have here in evidence.

Mr. Pratt: I am talking about the OPA——

Mr. Faulkner: We are not charged with an OPA violation. Mr. Reid testified that the Department of Agriculture did not weigh cases, that they graded eggs according to the hand-weight of eggs. It is not fair to these defendants to say, or

(Testimony of Ruby J. Goddard.)

even to intimate that because a case of eggs was four ounces under—— [3698]

Mr. Pratt: Eight ounces.

Mr. Faulkner: Eight ounces?

Mr. Pratt: Eight ounces under the minimum weight for Small eggs.

Mr. Faulkner: Yes, and six pounds over the minimum weight for individual eggs.

Mr. Pratt: No.

Mr. Faulkner: Yes, 27½ pounds for individual eggs and 34 pounds for the case. I submit those eggs are not properly designated in this record as Peewee eggs.

The Court: Is the matter submitted?

Mr. Faulkner: Yes, your Honor.

The Court: Read the question, Mr. Reporter.

(Question read by the reporter.) [3699]

The Court: The objection is overruled. He may answer.

The Witness: A. When I filled any of these orders I was always very careful of the way I filled them, and I can't see how a case of eggs like that possibly got into the order.

Mr. Pratt: Q. There were cases of eggs of that weight around your warehouse, were there not?

A. I told you there were three, four or five cases a week.

Q. And how were they labelled or marked?

A. They came in all different type cases. They would be old secondhand cases, fiber cases, wooden cases.

(Testimony of Ruby J. Goddard.)

Q. Were eggs of that size ever labelled with one of your green labels indicating Medium weight?

A. They came in with a blue label and sometimes an old case with an old label on it.

Q. And those labels, whatever they were, were permitted to remain on them, were they?

A. They were secondhand labels, secondhand cases.

Q. And when they were delivered on an order the label appearing on the case would then not reflect the weight of the eggs?

A. They were not being delivered on those War Shipping orders.

Q. And then so far as this particular case of eggs on the Cape Breton was concerned, you have no explanation of how it happened, that right?

A. No, sir, I do not know how it got there.

Q. Referring to the matter of this stamp, the Department of Agriculture stamp, which has been variously referred to by [3700] various names, but which the testimony shows was not an authentic stamp, you have said that you never heard of such a stamp? A. That is right.

Q. You have said that the desk which you used there at the plant—and I think you referred to the old plant on Townsend Street——

A. I still have the same desk over at the plant on Missouri Street.

Q. You said that that desk had no locked drawer, did you? A. That is right.

(Testimony of Ruby J. Goddard.)

Q. Whatever drawers it had were subject to anybody's use? A. That is correct.

Q. How many drawers were there in that desk?

A. Three.

Q. Three drawers and they were always unlocked, is that correct? A. Always unlocked.

Q. Now, so far as the safe upstairs is concerned, you have said that that safe was in a room where there was a number of clerks working?

A. It was right up in the main office.

Q. And there were a half-dozen or more clerks there at all times? A. That is right.

Q. You had access to that safe, did you not, Mr. Goddard?

A. I had never had any occasion to put anything in that safe.

Q. You say you never used that safe?

Mr. Faulkner: Let him finish, Mr. Pratt.

Mr. Pratt: Q. Did I interrupt you, Mr. Goddard? [3701]

The Witness: If anybody asked me to put a book or something in there, I would put it in there for him.

Mr. Pratt: Q. You used it then as a favor to others, is that all?

A. No, just put some records in there if anybody asked me to.

Q. Didn't you ever put any of your own articles that you used perhaps in the conduct of your business? A. I had no articles to put up there.

(Testimony of Ruby J. Goddard.)

Q. You had no occasion, then, ever to go to that safe except as a favor to someone else?

A. That is right, to put some records in there.

Q. What was kept in the safe besides records?

A. There were books in there. That is all I could see.

Q. Just books. Now, you mentioned the fact that Colonel Kielsmeier was in the habit of putting the VC stamp on cases of eggs which he selected for candling, for inspection?

A. That is correct.

Q. Then after he placed his VC stamp on them—and he would do it on a number of cases before he started candling wouldn't he?

A. As many samples as he would pick.

Q. Then if he rejected one of those cases what would he do about the stamp?

A. He would deface it.

Q. And that was his uniform custom, was it?

A. No, I said he would do that sometimes.

Q. And what other ways did he have of indicating the cases that [3702] he wanted to examine?

A. He would use a chalk mark. He would put on a dab of ink with his brush.

Q. He did then use a brush to put a dab of ink?

A. Sometimes.

Q. What kind of brush was that?

A. It was one of those fountain pen stencil brushes.

Q. Was that the kind of brush that is used for a stencil?

(Testimony of Ruby J. Goddard.)

A. It isn't very good for stencilling.

Q. But it was a sort of fountain brush, is that it?

A. It was a good brush for putting ink on a rubber stamp.

Q. What color ink did he have in that brush, do you recall? A. No, sir.

Q. Now, you mentioned the fact that when butter was prepared for delivery to the room it was examined, I believe, first at your plant?

A. That is correct.

Q. And then I think you said it was subject to inspection at the point of delivery?

A. That is correct.

Q. Do you know the extent to which butter was examined at the point of delivery for weight?

A. Well, my drivers on a number of occasions told me that they would inspect the quality and also weigh the butter there.

Q. All you know about that is what your driver told you?

A. That is right, because they would be delayed. I would ask them why it would take them so long to make those deliveries.

Q. Don't you know as a matter of practice that there was no [3703] weighing at the point of delivery for lack of manpower or personnel of the Army?

A. No, sir, they always had plenty of help down at the plant. Mr. Pratt, would you call a corps of six or eight men coming down to make an inspection of sixty or eighty cases a lack of manpower?

Q. I am talking about the force at the point of

(Testimony of Ruby J. Goddard.)

delivery for butter, and I am asking you whether you do not know as a matter of practice and of fact the weighing done was sketchy, to say the least, and very rarely done?

A. No, sir. If we sent a load of inspected eggs out to the Presidio, my truck would be there three hours waiting for the man to finish making his re-inspection. Now, if there was a lack of manpower they would not take so long to do thing like that.

Q. In regard to the delivery of eggs at Fort Mason—and you testified, I believe, that the deliveries there were subject to inspection at the point of delivery?

A. There were two types of deliveries going to the Fort Mason docks: deliveries for export and deliveries for transport boats. Now, which one have you reference to, Mr. Pratt?

Q. Let us speak about the inspections for export. A. Okeh.

Q. And those were inspected where first?

A. At the packing plant. [3704]

Q. At your plant?

A. Not on Townsend Street. In a packing plant in the country, usually at Petaluma.

Q. Inspected at Petaluma?

A. In other words, they would supervise the packing of that grade of eggs. The Army inspector would be at the plant while those eggs were being packed.

Q. You mean at the plant at Petaluma?

A. That is right.

(Testimony of Ruby J. Goddard.)

Q. And there was no inspection then at your plant here in San Francisco?

A. We never saw those eggs in San Francisco at our plant.

Q. Now, were these cases also strapped?

A. I imagine they were. If they called for strapping they would be strapped.

Q. Did you ever see cases of that sort that were delivered to the Army for export?

A. I saw them down at the ice house at the time I went down to the Merchants incident.

Q. With that exception, did you ever see them?

A. I don't think I have.

Q. Then they did not come to your plant at all?

A. No, sir.

Q. They went directly from Petaluma to the dock? A. To the dock.

Q. And there was an inspection then at Petaluma and also one at the pier, is that right?

A. That is right.

Q. Do you know whether the inspection at the pier was actually made?

A. Well, the men never would tell me. I took it for granted that it was. [3705]

Q. All you know is you took for granted there was an inspection? A. That is right.

Q. Don't you know as a matter of fact that when large shipments came from Petaluma to the pier that they were not actually inspected at the pier at all?

A. No, sir, I do not know that. At most occa-

(Testimony of Ruby J. Goddard.)

sions I would say they would be inspected down there.

Q. No, you also spoke about the fact, or mentioned the fact, that at no time were inspections of eggs made by the Department of Agriculture inspectors at your plant thirty at a time?

A. I didn't say that.

Q. What did you say?

Mr. Faulkner: He said two thousand at a time.

Mr. Pratt: Q. I am referring to your testimony in regard to the method.

A. Mr. Faulkner asked me whether they were inspected thirty cases at a time for these large orders whether it was a seven hundred case order or a thousand case order.

Q. Your answer is it was not done that way, is that right? A. No, sir, that is right.

Q. Isn't it a fact that thirty cases of eggs will go on a flat? A. That is right.

Q. And that they are looked at thirty at a time because of the convenience of using the number of eggs that can be piled on one flat?

A. No, sir, Mr. Pratt. You heard [3706] Mr. Moosman testify that if he had a large lot of eggs to look at, there would be thirty on a tray, but there may be as many as ten, nine, or eleven trays, whatever the order called for.

Q. He examined them by trays, did he not?

A. No, sir, he examined the entire lot complete.

Q. I think you said you know nothing about the

(Testimony of Ruby J. Goddard.)

sale and delivery of eggs to the Post Exchange at the Presidio? A. That is right.

Q. You mean that your company never sold eggs to the Post Exchange at the Presidio?

A. That is right.

Q. How about the Commissary?

A. We sold eggs to the Sales Commissary.

Q. And the Commissary is the place where food products are sold to the soldiers or the officers, is that right?

A. To the officers, that is right.

Q. Now, you know of sales being made to the Commissary? A. That is correct.

Q. In large numbers, do you not?

A. To the Commissary?

Q. Yes?

A. No. They would buy about ten, fifteen or twenty cases of eggs at a time.

Q. And how frequently was that?

A. Well, sometimes three or four times a week and sometimes only once or twice a week if we happened to have the contract.

Q. So that the quantity per delivery to the Commissary was small, is that it?

A. That is correct. [3707]

Q. Don't you know any instances where they were larger deliveries of eggs than just a few cases of eggs at the Commissary?

A. I didn't say a few. I said ten, fifteen, twenty, and there may have been a twenty-five case delivery.

Q. How about a forty or fifty case delivery?

(Testimony of Ruby J. Goddard.)

A. I don't recollect any forty or fifty cases of eggs at one time to the Commissary.

Q. Referring to this episode at the Merchants Ice and Cold Storage Company, how many cases of eggs were there there, did you say?

A. I said that there were about eight hundred cases of eggs in the lot.

Q. About eight hundred cases and the Army inspectors were going over all of those cases to determine whether there were double wire marks on them?

A. They were looking for some wire marks.

Q. And what was the purpose of looking for wire marks? A. I didn't inquire.

Q. Don't you know that the reason was to try and determine whether by reason of there being double wire marks the old strapping had been removed and the eggs had been transferred?

A. Mr. Pratt,——

Q. Wasn't that the reason for that examination?

A. I didn't inquire at all. When you pile rows of eggs on top of one another the wires always shift.

Q. Answer my question, Mr. Goddard. Wasn't the purpose of this examination there to determine whether there had been a transferring of eggs after they had been inspected and stamped and wired?

A. I had nothing to do with the purpose. Mr. Smith handled that. We were just doing a physical job down there.

Q. You were just a laboring man on that occasion?

(Testimony of Ruby J. Goddard.)

A. That is all I was on that occasion.

Q. And you did not know that the purpose was to determine whether there had been a switching of eggs?

A. I never inquired. I just did my job.

Q. They found cases of eggs on that occasion which showed the double wire marks, did they not?

A. They asked us to set sixty cases aside, around sixty cases, something along that line.

Q. They rejected about sixty cases because they had double wire marks, is that right?

A. I don't know. It was their opinion.

Q. Did they go into the cases?

A. The inspectors in a room there?

Q. Yes? A. No, sir.

Q. All they did was examine for wire markings?

A. That is all.

Q. And they rejected sixty cases because of something relating to wire marks?

A. They set sixty cases aside. [3709]

Q. And then you replaced those, did you, with other cases?

A. I think somebody handled that.

Q. You do not know?

A. I didn't handle it.

Q. Whose eggs were those?

A. They came from one of our packing plants.

Q. Refering to the Cheddar Cheese, you are familiar with Cheddar Cheese, are you not, Mr. Goddard? A. Yes, sir.

(Testimony of Ruby J. Goddard.)

Q. Where does the Cheddar Cheese come from that is handled by your concern?

A. It comes from Western Refrigerator.

Q. And that is your own concern?

A. That is right. And we buy some cheese on the street from different dealers.

Q. Now, Chedar comes in wheels and loaves, as has already been testified to?

A. That is right.

Q. When it comes to Cheddar loaves, how are they packed? A. Five to a case.

Q. They are always packed five to a case?

A. No, we have them six to a case also.

Q. When they come into your plant they are labelled with a weight, are they?

A. That is right.

Q. And you do not open those cases, do you?

A. Do we open them?

Q. Yes? A. Sometimes.

Q. And for what purpose?

A. Check weight.

Q. Check weight?

A. We sell part cases sometimes.

Q. What? A. We sell part cases. [3710]

Q. Besides opening the cases for the purpose of checking weights or perhaps to sell a part of a case, there is no occasion to open the cases, is there?

A. Not usually.

Q. So you rely, of course, on the weight marks that appear on the outside? A. That is right.

Q. Those cases weigh approximately what?

(Testimony of Ruby J. Goddard.)

A. Well, they vary. Are you talking about loaf cheese?

Q. I am talking about Cheddar loaf?

A. I have seen Cheddar loaf run from about, oh, twenty-three and a half, twenty-four pounds, up to thirty, thirty and a half pounds.

Q. So that each of the five loaves in a case would vary in weight from four and a fraction to six pounds? A. I would say.

Q. Did you ever see individual loaves weigh as much as six pounds? A. Many an occasion.

Q. Many times. And that appears on the outside of the case?

A. Just the total weight. The total weight appears on the outside of the case.

Q. The total weight of the contents of the case appears on the outside? A. That is right.

Q. And when those cases come in to you they are shipped out on the basis of the weight that appears—

A. Of the marked weight.

Q. —that appears on the box, isn't that correct? A. That is right. [3711]

The Court: We will take a recess for a few minutes.

(Recess.)

The Court: Waive the roll call, stipulating all the jurors are seated in the box. You may proceed.

Mr. Pratt: Q. Mr. Goddard, were the weights ever scraped off of these Cheddar loaf cheese boxes, cases? A. You mean all the weights?

(Testimony of Ruby J. Goddard.)

Q. The weight of the contents of the box at the time? A. Not on the box itself, no.

Q. The weight always remained on the box?

A. That is right.

Q. It was never scraped off?

A. Not as far as I know.

Q. You have said that these weights varied up to thirty—up to thirty-two pounds, did you say?

A. No, I said a little over thirty pounds.

Q. A little over thirty pounds, at a minimum of what?

A. I said it would be around twenty-four, somewheres along there.

Q. Was that true during April and May of 1944? A. It may have been.

Q. Don't you recall whether this variation in weights occurred during that period?

A. Well, we received cheese in all the time, Mr. Pratt, and different shipments have different weights.

Q. I direct your attention to these invoices here—I think you would call them invoices—which are marked Exhibit 177 [3712] for Identification and were produced by Mr. Faulkner. This is a portion of those that were produced and these, I take it——

Mr. Faulkner: May I see it? You produced so many, Mr. Pratt. Which ones are these?

Mr. Pratt: Q. I take it these are in your handwriting, aren't they? A. That is right.

Q. All of them are, I think, aren't they?

A. They appear to be.

(Testimony of Ruby J. Goddard.)

Mr. Pratt: May these be marked 177-A to distinguish them from the others that were produced?

The Court: They may be admitted and marked.

(The documents were thereupon received and marked U. S. Exhibit 177-A for Identification.)

Mr. Pratt: Q. Now, the first of these is dated April 1, 1944, and they go, I take it, consecutively by dates—I am assuming this—to May 12, 1944, and will you read the weights per case of Cheddar loaf cheese?

Mr. Faulkner: We object to that as not proper cross-examination of this witness. These are not invoices involving any ship.

Mr. Pratt: Q. They are invoices, are they not, Mr. Goddard, from Nye & Nissen to City Sales?

A. That is correct.

Mr. Faulkner: We object to that as not proper cross-examination. In other words, any evidence that they have, [3713] the Government inspectors went out there, the Department of Justice, in October, 1944, and copied all of these records. If they have any proof in relation to the records it would be part of their case in chief. It is not part of the cross-examination of Mr. Goddard.

Mr. Pratt: There has been some testimony on this subject—I think it was by Mr. Magee—that these are original records of the company produced at our demand and they are in the handwriting of the witness, and I would like to have him examine them in connection with a statement that he made, both on direct and cross-examination, that the weight

(Testimony of Ruby J. Goddard.)

of Cheddar cheese boxes varied from about twenty-four pounds to slightly over thirty pounds.

Mr. Faulkner: There is no testimony of this witness on the weights of cheese on direct examination.

Mr. Pratt: I think there was.

Mr. Faulkner: I beg your pardon. There was none.

Mr. Pratt: He testified in regard to cheese, and in regard to Cheddar loaf cheese, and it is certainly within the range of the direct examination to examine him in connection with his records which give the weights of Cheddar loaf cheese.

Mr. Faulkner: If your Honor please, the entire case of the Government against Mr. Goddard in respect to deliveries involve three ships: the Cape Breton, the Cape Cumberland and the Phillipa. Now, there are ten or fifteen invoices, [3714] unconnected with any of those ships, unconnected with any delivery, unconnected with his direct examination. I submit it is not proper cross-examination.

Mr. Pratt: On the other hand, if the Court please, he has testified to the weights of cheese, to cheese being delivered to particular boats, and it has been testified already that this cheese was invoiced from Nye & Nissen to City Sales as a sort of inter-company transaction, and it is demonstrated by these invoices that the weights did not vary as indicated by his testimony, and it is right in line, right within the range of the direct examination, and certainly proper cross-examination.

(Testimony of Ruby J. Goddard.)

The Court: Read the question.

(Question read.)

Mr. Pratt: I have previously asked him to indicate the weight of cheese per box of Cheddar loaf cheese as indicated by his document that he wrote in connection with these inter-company transactions.

The Court: You may answer.

The Witness: A. Well, here is an invoice for three cases——

Mr. Faulkner: Your Honor, we submit it is not proper cross-examination and there is no foundation laid in that the quantity of cheese read from a particular invoice has any relationship to the deliveries on these vessels. [3715]

The Court: The Court will allow it. The objection is overruled.

Mr. Faulkner: Exception.

The Witness: A. Here is an invoice calling for three cases of Cheddar Loaf cheese for a total weight of 79.

Mr. Pratt: Q. How much is that per loaf?

A. You could have a case of thirty pounds, a case of twenty-five pounds, which would make fifty-five, and a case of twenty-four, which would make seventy-nine pounds.

Q. We will take the first of these. Do you find any item of Cheddar Loaf cheese on the first of those bills? A. No, sir.

Q. You say there is none on that first page?

A. Not of loaf cheese.

(Testimony of Ruby J. Goddard.)

Q. All right, take the second one. Is there any Cheddar Loaf cheese on the second one?

Mr. Faulkner: Same objection, your Honor.

The Court: Same ruling.

Mr. Faulkner: Exception. May I have the same objection to all questions asked as to each one of these documents without repeating it?

The Court: With relation to this offer, yes. Let the record so show.

Mr. Faulkner: Exception.

The Witness: A. Thirty cases of Cheddar Loaf, seven hundred and sixty-two pounds. [3716]

Mr. Pratt: Q. How much is that per box?

Mr. Faulkner: What is the question?

(Question read.)

Mr. Faulkner: If your Honor please, thirty cases of Cheddar Loaf cheese with a figure at the end of it does not indicate the weight per loaf.

The Witness: Cheddar Loaf cheese will run in all different weights. You may have quite a few boxes of a light weight and a few boxes of heavy weight in the same load. Unless you have each box itemized on the invoice, there is no way of telling what that cheese averaged.

Mr. Pratt: Q. You know what they averaged by dividing——

A. No, you may have some thirty pound packages in that delivery, you may have some twenty-nine pound packages in that delivery.

Q. What is the average weight per case of those thirty cases?

(Testimony of Ruby J. Goddard.)

A. Oh, around twenty-five and a half pounds.

Q. Do you find Cheddar Loaf cheese on the next one, dated April 3, 1944? A. No, sir.

Q. Take the next one. Is there Cheddar Loaf cheese on that one? A. Yes, sir.

Q. How many cases? A. Two cases.

Q. The total weight? A. Fifty-two pounds.

Q. That is twenty-six pounds apiece on the average? A. If they come that way. [3717]

Q. On an average?

A. You can't say that, because it may have been two different weights. You are just assuming they are the same weight.

Q. The two cases weigh fifty-two pounds?

A. You could have twenty-four and twenty-eight there.

Q. Answer my question, Mr. Goddard?

A. Yes, they weighed fifty-two pounds.

Mr. Faulkner: We make the further objection that we are not concerned with the exchange of cheese between Nye & Nissen and Nye & Nissen City Sales. The issue here is the weight of cheese on the waterfront with respect to particular vessels.

Mr. Pratt: We are concerned here, if the Court please, because the corresponding invoices from City Sales or from the Nye & Nissen City Sales to these various ships will show that uniformly the weight was placed at thirty pounds.

Mr. Faulkner: The record will show, Mr. Pratt, when you are finished, that the weight of cheese delivered to the waterfront was uniformly placed

(Testimony of Ruby J. Goddard.)

at thirty pounds at the time Mr. Nystrom formed a connection with the Department of Justice, and it stopped the minute he left, and it never started before he saw a Department of Justice agent. That is what these records will show. That will show then from the time Mr. Nystrom——

The Court: There will be plenty of time to argue this to the Jury. [3718]

Mr. Faulkner: Very well. Mr. Pratt made a statement of what these records will show.

The Court: Proceed with this case, gentlemen.

Mr. Pratt: Q. Will you take the next one, the next of those invoices that shows Cheddar Loaf cheese?

A. Four cases of Cheddar Loaf cheese, one hundred and one pounds.

Q. That is twenty-five and a quarter pounds on the average, is it not?

A. If you divide it by four cases.

Q. What is the next one?

A. Six cases of loaf cheese, one hundred and fifty-nine pounds.

Q. And what is the next one?

A. Five cases of loaf cheese, one hundred and twenty-five pounds.

Q. That is just twenty-five pounds each, is it not? A. If you divide it by that number.

Q. And the next one?

A. Two cases of loaf cheese—six cases of Cheddar Loaf, one hundred and fifty-five pounds.

Q. And the next one?

(Testimony of Ruby J. Goddard.)

A. Four cases of loaf cheese, one hundred and six pounds.

Q. And the next one?

A. Four cases of Cheddar Loaf cheese, 106 pounds.

Q. And the next?

A. Two cases of loaf cheese, fifty-two pounds.

Q. Isn't there one of five cases at one hundred and twenty-nine pounds?

A. Oh, yes, excuse me. Five cases, [3719] one hundred and twenty-nine pounds.

Q. And the next one?

A. Two cases, fifty-two pounds.

Q. And the next?

A. Six cases, one hundred and fifty-six pounds.

Q. And the next?

A. One case, twenty-six pounds.

Q. Yes, and the next one?

A. Three cases, seventy-nine pounds.

Q. And the next?

A. Eight cases, two hundred and eleven pounds.

Q. And continue, please?

A. Two cases, fifty-two pounds; twenty-nine cases, seven hundred and fifty-five pounds; five cases of loaf cheese, a hundred and thirty pounds; one case of loaf cheese, twenty-six pounds; four cases of loaf cheese, one hundred and five pounds; five cases of loaf cheese, one hundred and thirty-two pounds; ten cases of loaf cheese, two hundred and sixty-eight pounds; ten cases of loaf cheese, two hundred and fifty-seven pounds; three cases of loaf

(Testimony of Ruby J. Goddard.)

cheese, seventy-nine pounds; two cases of loaf cheese, fifty-two pounds; one case of loaf cheese, twenty-five pounds; two cases of loaf cheese, fifty pounds; five cases of loaf cheese, one hundred and twenty-eight pounds; two cases of loaf cheese, fifty-two pounds; one case of loaf cheese, twenty-six pounds.

Q. Isn't there one of twenty-five pounds, a previous one?

A. Yes, there is, twenty-five pounds.

Mr. Pratt: I offer Exhibit 177-A for Identification in [3720] evidence.

Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial, produced under an identification which was not proper cross examination, and upon the ground that the quantities of cheese reflected there have not been identified in relation to particular shipments of cheese involved in this case.

The Court: The objection is overruled. Let it be admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 177-A for Identification was thereupon received in evidence.)

Mr. Pratt: That is all.

Redirect Examination

Mr. Faulkner: Q. Mr. Goddard, during the cross examination there was some reference to some so-called "Peewee" eggs. You have heard the testimony in this case relating to the weights of eggs

(Testimony of Ruby J. Goddard.)

delivered to the waterfront in connection with the ships that came in that period of April and May of 1944? A. Yes, sir.

Q. Now, in your experience at that time in the egg business, in the handling of eggs in your plant and with the Department of Agriculture, in relation to the inspection of those eggs, were cases of eggs weighed by you to determine the weight?

A. No, sir. [3721]

Q. Were cases of eggs weighed by the Department of Agriculture to determine the weight?

A. No, sir.

Q. How were the weights of eggs determined?

A. By a hand scale.

Q. A hand scale?

A. By a visible inspection and hand scale.

Q. Do you know the minimum weight for an individual egg classified as Medium?

A. No, sir.

Q. Do you know the minimum weight of an individual egg classified as Small? A. No.

Q. Do you know those minimum weights at all?

A. I never paid much attention to them.

Q. When Mr. Pratt was asking you questions about "Peewee" eggs and you testified, Mr. Goddard, that three or four cases a week only would be in the plant of Nye & Nissen, were you referring to eggs that had a weight of approximately thirty-two pounds a case?

A. No, not exactly. I referred to a "Peewee" egg—our packing plants, when they would pack

(Testimony of Ruby J. Goddard.)

Smalls, would have a cutout—not a cutout—it would be a second grade egg. Now, that second grade egg, they would also put in maybe some of their small eggs and we would call it a "Peewee".

Q. You have heard testimony in relation to this delivery—I think there was one instance where Mr. Pratt pointed it out—the eggs weighed thirty-four pounds or a few ounces under thirty-four pounds. Assuming, Mr. Goddard, that the [3722] minimum weight for a dozen Small eggs was 15 ounces, did you intend to convey in your testimony that eggs ~~that would~~ come within the range of being termed Small eggs only came into your plant in four or five cases? A. No, sir.

Q. In other words, you had larger quantities of Small eggs? A. That is correct.

Q. Do you know the proportion of Large eggs, Mediums, and Smalls, that passed through your plant in April and May of 1944?

A. Well, there would be thousands of cases of Large eggs, thousands of cases of Mediums, and there would be some cases of Small eggs, but how many I do not just remember. [3723]

Q. You have never assembled those figures?

A. No, sir.

Q. Mr. Pratt asked you some questions about an incident which you testified to on your direct examination relating to the Post Exchange, and he asked you if you sold merchandise to the Post Exchange. Do you recall that?

A. Yes, sir.

(Testimony of Ruby J. Goddard.)

Q. You said that you did not?

A. That is right.

Q. He then asked you if you sold merchandise, eggs particularly, to the Sales Commissary?

A. Yes, sir.

Q. Did you sell to the Sales Commissary?

A. Yes, sir.

Q. What is the Sales Commissary at the Presidio?

A. The Sales Commissary is a store where the officers buy their supplies.

Q. In connection with your fulfillment of orders for the Sales Commissary for the United States Army, how were those eggs packed?

A. In cartons.

Q. What quality of eggs did you deliver to the Sales Commissary?

A. AA, the very highest quality.

Q. Why?

A. Because all the officers buy these eggs. When an inspector would inspect these eggs he would say, "Make sure these eggs are good, because maybe the general will buy these."

Q. Did you ever send to the Sale Commissary loose eggs for delivery to the Sales Commissary—by loose eggs I mean in fillers and flats?

A. No, sir.

Q. You heard the testimony of Mr. Andrade. He said he went to the Post Exchange and you have testified that you did not [3724] deliver to the Post Exchange. Now, Mr. Pratt in his cross ex-

(Testimony of Ruby J. Goddard.)

amination has planted in your mind Sales Commissary. Would there be any incident where you would be selling to the Sales Commissary at the Presidio eggs in flats and fillers?

A. No, sir.

Q. Having in mind that Mr. Pratt has introduced these—these are all in evidence now, Mr. Pratt, are they?

Mr. Pratt: Yes.

Mr. Faulkner: May I have the exhibits showing the deliveries to the Cape Breton, Cape Cumberland and Phillipa? Nos. 77, 140 and 80.

Q. As I understood your testimony on direct examination, when you filled an order you would designate the row of eggs for the eggs to come out of to the driver, and you would tell the driver to get so many cases of cheese, and you would always try to check the weight, is that correct?

A. That is correct.

Q. I show you the Cape Breton and ask you if in connection with the delivery to the Cape Breton if you selected cases of cheese that had an average weight of 30 pounds? A. No, sir.

Q. How many cases were involved in that shipment? A. Three cases of loaf cheese.

Q. What was the weight? A. 84 pounds.

Q. Now, I show you your hand tag relating to a delivery to the SS Phillipa and ask you if in connection with the filling of the order it was your effort at the time it was filled to personally select the cheese to fill that order? A. Yes, sir.

(Testimony of Ruby J. Goddard.)

Q. Did you select any California loaf cheese?

A. Yes, sir.

Q. How many cases? A. Two cases.

Q. What was the weight of the cases?

A. 56 pounds.

Q. It would be 25½ pounds apiece, is that correct? A. If you average it, 56 pounds.

Q. That would be 28 pounds if you average it?

A. That is right, if you average it.

Q. I show you an exhibit—it is not a hand tag, but it is a typewritten exhibit, No. 140, in relation to the Cape Cumberland. I will ask you if at the time you filled that order, you filled that order——

A. 4 cases——

Q. Just a minute—at the time you filled that order did you select cases of California loaf cheese?

A. 4 cases of loaf cheese.

Q. How many pounds? A. 112 pounds.

Q. You did not select cases of cheese that averaged 30 pounds apiece? A. No, sir.

Q. In relation to the Cape Cumberland and in relation to the SS Phillipa, you heard the testimony here that Mr. Nystrom delivered the cheese in each instance on those boats? A. Yes, sir.

Q. But you have already testified you have no recollection on that subject.

A. That is right.

Mr. Faulkner: I think that is all, Mr. Goddard.

The Court: Step down. [3726]

WILLIAM A. GEARY,

called as a witness for Defendants; sworn.

The Clerk: Q. Will you state your name?

A. William A. Geary.

Direct Examination

Mr. Faulkner: Q. What is your business or occupation?

A. Chief Wharfinger, State Board of Harbor Commissioners.

Q. How long have you been with the State Board of Harbor Commissioners?

A. Since 1928.

Q. In response to a subpena served upon you as a representative of the State Board of Harbor Commissioners have you produced in court the records of the State Harbor Commission showing the record of the berthing of the US Aretic at Pier 46-56 in the port of San Francisco on or about May 31, 1940? A. Yes, sir.

Q. [redacted] that one of these volumes?

A. Yes, sir.

The Court: May the Court inquire at this time the purpose of this testimony?

Mr. Faulkner: Yes, your Honor. Your Honor will recall the purpose of this testimony is to establish that at the time the quantity of eggs were inspected by Mr. Moosman both of those ships were tied up involved in that inspection; tied up at a pier at the waterfront for loading, and your Honor will recall that Mr. Moosman testified that it was

(Testimony of William A. Geary.)

uniform to deliver eggs to the pier for inspection, except in an instance, [3727] a single instance or exception, when the United States Navy requested that an exception be made because a boat was tied up at Mare Island in the course of repair.

The Court: Can't a digest be made of that?

Mr. Faulkner: I have that digest, your Honor.

The Court: Proceed.

Mr. Faulkner: May I put both of those on your Honor's desk and then he can pick the ones he wishes?

Mr. Pratt: If the Court please, I will make any kind of a concession that will avoid putting these records in.

Mr. Faulkner: Mr. Zirpoli copied the record. I will say to you Mr. Zirpoli——

Mr. Pratt: You do not need to. If Mr. Zirpoli made them they are O.K. with me.

The Court: Examine him about them, if there is any question about it, if they have any relation to this case.

Mr. Faulkner: Q. Mr. Geary, having in mind the suggestion of the court and the statement of counsel, here is a white paper. What does the original of that represent?

A. That would be in those books, there.

The Court: Q. What is that you have in your hand?

A. This is the original arrival of the vessels at Pier 9 on the 6th of October, 1939.

Mr. Faulkner: Q. And what is the vessel that

(Testimony of William A. Geary.)

your records showed arrived at the pier on October 9, 1939?

A. There is a [3728] vessel, the Bridge, the USS Bridge, a steamer, 3394 net tons, the name of the owner, agent, The Twelfth Naval District. She was a coastwise, loading. She arrived in the port of San Francisco at 11:00 a. m., October 6, 1939.

The Court: Q. What arrived?

A. The vessel.

Q. What vessel? A. The Bridge.

Mr. Faulkner: The USS Bridge. I offer that in evidence, if the Court please.

Mr. Pratt: No objection.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit DS in evidence.)

Mr. Faulkner: Q. Mr. Geary, the document I just showed you is the counterpart of an original official record of the State Board of Harbor Commissioners relating to the arrival of vessels, is that correct? A. Yes, sir.

Q. Do you also keep an official record of the departure of vessels?

A. That form you just presented is what we call Form No. 1. That is the arrival of the vessels.

Q. Now, this kind of pinkish paper—is that a counterpart of the original record showing the departure of the USS Bridge?

A. Yes, this is Form No. 2. This is the departure of the vessels.

The Court: Read what the record discloses.

(Testimony of William A. Geary.)

The Witness: Departure. Name of the vessel is the Bridge, [3729] USS Bridge, steamer, 3394 net tons, U. S. Naval Supply, Twelfth District, arrived at 11:00 a.m., October 6, 1939, and departed at 9:00 a.m., October 17, 1939.

Mr. Faulkner: Q. And have you a place there indicating the purpose of the vessel at the time during its presence at the pier?

A. The vessel was loading.

Mr. Faulkner: I offer this in evidence, if your Honor please.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit DT in evidence.)

Mr. Faulkner: Q. The departure record shows the date of the arrival of the vessel whose departure is noted, is that correct?

A. It shows the date of arrival and the date of departure.

Q. Now, I show you a copy of a record and ask you if that is a copy of an official record of the State Board of Harbor Commissioners kept by the Board in relation to the movement of vessels relating to the USS Arctic? A. Yes, sir.

Q. Does it show the time of the arrival of the USS Arctic at a particular pier?

A. Yes, sir.

The Court: Read what the record discloses.

The Witness: The USS Arctic, American steamer, 3913 tons, name of owner or agent, United

(Testimony of William A. Geary.)

States Navy, Twelfth Naval District. Arrived 8 a.m., May 31, 1940, at Pier 56.

Mr. Faulkner: Q. Under the heading of the purpose of the [3730] presence of the vessel, what does that disclose?

A. The vessel was loading.

Q. And do you know those vessels, the Arctic and the Bridge?

A. I have seen them, yes, sir.

Q. They were United States Navy supply vessels were they not, both of them?

A. Yes, sir.

Mr. Faulkner: I offer that in evidence.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit DU in evidence.)

Mr. Faulkner: Q. I show you this kind of pink sheet and ask you if that is a counterpart of an official record of the State Board of Harbor Commissioners kept by the State Board of Harbor Commissioners in relation to the movement of vessels at the San Francisco waterfront?

A. Yes, sir.

Q. Does that show the time of the departure of the USS Arctic which came into port or the pier on or about May 31st? A. Yes, sir.

Q. And what does that record disclose?

A. The USS Arctic, American Steamer, 3919 net tons, the name of owner or operator, United States Navy. She arrived at 7 p.m., May 31, 1940, and departed at 12 noon, June 15, 1940.

(Testimony of William A. Geary.)

Mr. Faulkner: I offer that record in evidence, your Honor.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit DV in evidence.)

Mr. Faulkner: Q. When those two records relating to the [3731] Bridge are read together, does that mean that the vessel was continuously at the pier during the period covered from the arrival record to the departure record?

A. I didn't quite get the question.

The Court: Read it, Mr. Reporter.

(Question read.)

A. The name of the vessel is the Bridge, B-r-i-d-g-e. Yes, those records indicate that the vessel was at the pier from the time she arrived until she departed continuously.

Mr. Faulkner: Q. In connection with the record relating to the USS Arctic, does that mean that this vessel arrived on May 31st and remained constantly until the 17th of June or the date that you read, whatever the date that you read?

A. The 15th of June.

Q. The 15th of June? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. One of these vessels, Mr. Geary, was at Pier 46 and the other was at Pier 9, isn't that correct?

A. No, sir, one of them was at Pier 56?

Q. Are you familiar with Pier 56?

A. Yes, sir.

(Testimony of William A. Geary.)

Q. Are you familiar with Pier 46?

A. Yes, sir.

Q. Do you know whether or not you enter those piers at the same place to load the vessel at either 46 or 56?

A. They have two separate entrances. They are across the Embarcadero [3732] from each other, about 200 feet apart.

Q. 200 feet apart? A. Yes, sir.

Q. They are on the south part——

A. The south side of the Ferry Building.

Mr. Faulkner: That is all, Mr. Geary.

Mr. Pratt: That is all.

Mr. Faulkner: May I give these to the witness, your Honor?

The Court: Very well.

Mr. Faulkner: There are five exhibits here, your Honor, that have not been exhibited to the jury. May I exhibit them to them at this time?

The Court: Surely.

Mr. Faulkner: The first is in Mr. Goddard's handwriting, relating to the William Clark, and the other two are the records of the State Board of Harbor Commissioners relating to the USS Arctic and the USS Bridge.

(The documents in question were thereupon passed among the jurors.)

Mr. Pratt: If the Court please, I would be glad to complete the cross examination of Mr. Berman, if it is agreeable.

Mr. Faulkner: That will be very desirable on my part, your Honor.

The Court: Very well. [3733]

HENRY EUGENE BERMAN,

recalled.

Cross Examination (Resumed)

Mr. Pratt: Q. Mr. Berman, I show you these papers which have been produced upon request of the Government by Mr. Faulkner. Those are in your handwriting, are they not?

A. With the exception of these two that are typewritten—these three. However, they are boats that I take care of, and doubtless the hand tags are in my handwriting.

Q. The original hand tags of those that appear in type writing, those in your hand are in evidence, are they not?

Mr. Faulkner: May I have the last few questions read?

The Court: What are those exhibits, if you know?

The Witness: These exhibits here are hand tags in my handwriting. The first one is dated the 3rd of April, 1944, and the last one is dated May 12, 1944. They apparently all cover shipments to War Shipping Administration boats.

Mr. Faulkner: You added something that those were records that I produced for you.